

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

F'REAL FOODS, LLC and RICH
PRODUCTS CORPORATION,

Plaintiffs,

v.

HAMILTON BEACH BRANDS, INC. and
HERSHEY CREAMERY COMPANY,

Defendants.

C.A. No. 16-41-CFC

CONSOLIDATED

DEFENDANTS' AMENDED NOTICE OF APPEAL

Notice is hereby given that Defendants Hamilton Beach Brands, Inc. and Hershey Creamery Co. (collectively, "Defendants") in the above-named case hereby are amending their Notice of Appeal to the United States Court of Appeals for the Federal Circuit from the Judgment of this Court entered on August 26, 2019 (D.I. 286) and from any and all other judgments, orders, opinions, rulings, and findings that merge therein or are pertinent or ancillary to the foregoing (including any award of damages or injunctive relief), including, by way of illustration and not in limitation of the foregoing¹:

¹ Defendants are amending the Notice of Appeal to include subsequent decisions and future orders that have issued and will issue after the original Notice of Appeal was filed on July 9, 2020.

- The orders granting Plaintiffs' motions for summary judgment of (1) direct infringement of claim 21 of U.S. Patent No. 7,520,662 ("the '662 patent") for Defendants' use and demonstrations of the accused products and (2) direct infringement of claim 15 of U.S. Patent No. 7,144,150 ("the '150 patent").
See D.I. 241, D.I. 242, D.I. 249.
- The orders denying (1) Defendants' motions summary judgment of noninfringement of U.S. Patent No. 7,520,658 ("the '658 patent") and summary judgment of noninfringement of claim 22 of the '150 patent and (2) Defendants' Renewed Motion for Judgment as a Matter of Law of Noninfringement or, in the Alternative, Motion for a New Trial on Infringement of Claims 1, 5, 6, 10, and 11 of the '658 Patent and Claim 22 of the '150 Patent. *See D.I. 244, D.I. 250, D.I. 353.*
- The order construing disputed claim terms of the '150 patent, '658 patent, and '662 patent. *See D.I. 83.*
- The orders (1) granting Plaintiffs' motion of no invalidity of claim 21 of the '662 patent in view of Defendants' admissible prior art, (2) granting Plaintiffs' motion *in limine* regarding prior art combinations using the Sato reference, and (3) denying Defendants' Motion for New Trial on Invalidity of the '150, '662, and '658 Patents. *See D.I. 247, D.I. 249, D.I. 284 at 26:12-27:3, D.I. 352.*

- The orders denying (1) Defendants' motion to exclude certain testimony of Plaintiffs' damages expert, Dr. Michael P. Akemann and (2) Defendants' Renewed Motion for Judgment as a Matter of Law of No Lost Profits or, in the Alternative, Motion for a New Trial on or Remittitur of Lost Profits with respect to "upcharge" lost profits. *See* D.I. 240, D.I. 366, D.I. 367.
- Any order granting damages or equitable relief based on an erroneous finding of liability due to a finding of infringement or no invalidity, including the District Court's order granting an injunction and recall for the MIC2000 and any future order amending the judgment to include supplemental damages and interest. *See* D.I. 376, D.I. 382. Defendants respectfully submit that any such relief based on an erroneous liability determination should be vacated.

Payment of the required fee of \$505 was previously provided with the original Notice of Appeal. Pursuant to Federal Rule of Appellate Procedure 4(a)(4)(A), this Amended Notice of Appeal is timely filed within 30 days of the Court's order of July 16, 2020, enjoining the MIC2000 and ordering a recall. *See* D.I. 376.

Dated: August 11, 2020

/s/ Thatcher Rahmeier

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CERTIFICATE OF SERVICE

I certify that on August 11, 2020, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF prior to 6:00 p.m. ET, which will send notification of such filing to all registered participants. In addition, the foregoing will be served upon counsel of record via electronic mail.

Dated: August 11, 2020

/s/ Thatcher Rahmeier
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